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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/738,386 | 12/17/2003 | Michael D. Blenkarn | SIM03-0001 | 7249 |
| 7590 | 03/22/2005 | | EXAMINER | |
| Antoinette M. Tease, P.L.L.C. PO Box 51016 Billings, MT 59105 | | | HALE, GLORIA M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3765 | |

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SPN

| | | | |
|------------------------------|-------------------------|----------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/738,386 | BLENKARN, MICHAEL D. | |
| | Examiner Gloria Hale | Art Unit 3765 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12-17-04 Request for Reconsideration.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-6 and 8-11 is/are rejected.
 7) Claim(s) 7 and 12-17 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Dehner (US 6,154,884).

In regard to claims 1-6 and 8-11 Dehner discloses a breathable wader (10) with a leg portion (44,46) with a front seam and back seam (48,50) each extending from the front to the back of the garment with a foot covering (60,62); a chest portion (18); a cinching device being the suspender straps with the suspender adjustment device (not numbered) that cinches the suspenders on the shoulder of the wearer as broadly claimed. The Dehner wader has a pre-curved hip and knee portion as broadly claimed and which are wide enough to fit a shape of a flex knee of the wearer and the hip and wherein the size of the wearer would also affect the fit and flexibility of the garment on the wearer. The seam (40) is “elongated” as broadly claimed. The specifics of the elongation of the back seam in respect to the front seam is not claimed in the above claims. Dehner discloses an adhesive tape sealing means (66). (See Dehner, col. 2, line 17-30; 54-col. 4, line 21).

Claim Objections

Claim 9 is objected to because of the following informalities: The claims depends from itself and is incorrect. Appropriate correction is required.

Claims 7 and 12-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the cited references, alone or in combination, disclose the specific seam structures on the front and rear of the leg portions as claimed.

Response to Arguments

Applicant's arguments filed 12-17-04 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the specific cinching device structure; the entire wader being of a breathable fabric and the specific definition of the term "pre-curved") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claims 1 and 3 only require a wader with a leg portion, front seam and back seam and which includes a breathable material anywhere in its makeup. Claim 5 only

requires a cinching device. Applicant's has not claimed the specific cinching device as disclosed. In regard to claim 10 the Dehner patent discloses the sealing means as broadly claimed. The specific areas of sealing have not been claimed as argued by applicant's representative on page 3 of the response. The specific structure of the invention must be specifically and clearly claimed. The present claims are too broad and do not claim applicant's invention as argued on pages 2-4 of the response. Also, claim 9 must be corrected to not depend from itself.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale
Primary Examiner
Art Unit 3765
